*THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

–

+W.P. No. 5876 OF 2005

%Dated 10-02-2005

 # P.Nagalakshmi and 5 others.

Petitioners

VERSUS

$ The Government of Andhra Pradesh

Rep. By its Principal Secretary, Dept. of

Industries & Commerce, Secretariat ,

Hyderabad and 4 others.

RESPONDENTS

!Counsel for Petitioner: Mr. K.R. Prabhakar, Advocate,

^Counsel for Respondents 1 to 3: The Advocate General for GP for Mines and Geology.

Counsel for Respondent No.4 : Mr. N.Rajeswara Rao, Advocate

Counsel for Respondent No.5 : Mr. Vinod Kumar Desphpande

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> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

-

WRIT PETITION No. 5876 OF 2005

Between:

1. P.Nagalakshmaiah, S/o.A.Ayyappa,
A.P.State Handlooms Weavers Co-OP. Society Ltd.,

APCO, R/o.8/189/B4, Kalluru Industrial Estate Road,
Kurnool, Kurnool District.
2. Yarra Kota Mallaiah, S/o.Late Mallikharjunudu,
APCO, R/o.Challapalli post & Mandal, Krishna District.
3. G.Swami, S/o.Late G.Ramaswami,
APCO, R/o.Mojjigudem Post, Ellakondala Palli (M), Khammam District.
4. T.Anantha Nagabhushanam, S/o.Narasimha Murthy,
APCO, R/o.Penumarru, West Godavari District.
5. Balla Chandra Nageswara Rao, S/o.Narayana,
APCO R/o.NTR Street, Bandaru Lanka Post,
Amalapuram Rural Madal, Amalapuram, East Godavari District.
6. T.Raju, S/o.T.Yellaiah, APCO,R/o.H.No.13-81,

Main Road, Gajwal, Gajwal Mandal, Medak District.

..... PETITIONER(S)

AND

1. The Government of Andhra Pradesh,

rep.by its Prinicipal Secretary, Dept. of Industries &
Commerce for Handlooms & Textiles, Secretariat, Hyderabad.
2. The Commissioner & Director of Handlooms & Textiles,

B.R.K.Bhavan, Tankbund, Hyderabad.
3. The Joint Director (H&T)/Registrar-Authorised Officer,

Office of the Commissioner & Director of Handlooms &
Textiles, B.R.K.Bhavan, Tankbund, Hyderabad.
4 A.P.Handloom Wavers Co-Op. Society Ltd.,

APCO Having its Regd. office: Narayanguda, Hyderabad.
Rep.by its Vice Chairman & Managing Director.
5. Gaddam Jagannadham, S/o.G.Krishnaiah,
Presently elected as Chairman, R/o.Bellamalli,
Adilabad District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or order direction, more particularly one in the nature of writ of Mandamus, declaring the action of the 3rd respondent in supervising and conducting the meeting on 18/3/2005 and the resultant decision thereof electing the 5th respondent as the chairperson of the 4th respondent society as arbitrary, illegal, unjust, contrary to law, without the authority of law, contrary to A.P. Cooperative

Societies Act, 1964 and the rules made thereunder and also in violative of Article 14 of the Constitution of India and issue a consequential direct to the 3rd respondents herein not to give effect to the same and conduct fresh election by following due process of law and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.R.PRABHAKAR

Counsel for the Respondents 1 to 3.: THE ADVOCATE GENERAL FOR GOVT PLEADER FOR MINES AND GEOLOGY.

Counsel for the Respondent No.4 Mr. N. Rajeswara Rao

Counsel for the Respondent No. 5 Mr. Vinod Kumar Deshpande

The Court made the following :

ORDER:

The first petitioner was elected as a Member of Kallur Weavers Co-Op. Productions and Sale Society Limited about 25yearsback and was elected as President to the said society on 8.2.2003 and on 2.9.2003 he was elected as a Director of the 4th Respondent Society. While so, a no confidence motion was sought to be moved against one Sri Balla Chandra Nageshwara Rao, who was elected as Chairman of the 5th respondent and the 2nd respondent has issued notice dated 24.2.2005 with the resolution of 16 members seeking to convene a meeting of the 4th respondent Society so as to move no confidence motions, on 18.3.2005. It is averred that the said Balla Chandra Nageswara Rao has tendered his resignation, and thus the no confidence motion has become infructuous. It is the case of the petitioners that the 3rd respondent, who is representative of 4th respondent, ought to have taken steps under the A.P. Co-Operative Societies Act (for brevity the Act) to fill up the vacant post, but instead the 3rd respondent issued an order in Rc. No. 2728/05/A1 dated 18.3.2005 removing the said Balla Chandra Nageswara Rao from Chairmanship of 4th respondent, much contrary to Sec.34-A of the Acts, inasmuch as due to the resignation of the said Balla Chandra Nageswara Rao, no cause survived for the no confidence motion. It

is further submitted that Sec.34-A (11) of the Act deals with *filling up the vacancy in the manner prescribed*, which is further defined in Sec. 2(1) of the Act. It is further their case that under Rule 22 of the A.P. Co-Operative Societies Rules, 1964(for brevity the Rules), the Deputy Registrar who is the Election Officer shall appoint not less than 7 days prior to the polling, but no such notification is issued and the 3rd respondent assuming himself as the Election Officer has declared the 5th respondent as elected to the post of Chairman of APCO. It is further submitted that under Sub-Rule 2 of Rule 22 D, the election notification shall be issued not less than 3 days before the date of polling and Sub-Rule 4 of Rule 22 deals with the nomination of the candidate and, therefore, for the violation of Rule 22 of the Rules, the election of 5th respondent is totally in derogation of the Rules and provisions of the Act. It is their further case that the 3rd respondent who is nominated by the 2nd respondent to conduct no confidence motion and a fresh election without following the procedure, as contemplated in Rule 22 D of the Rules, with appointing an Election Officer not less than 7 days prior to the date of poll, the entire transaction is without power and authority. Therefore, filed the writ petition seeking writ of Mandamus, declaring the action of the 3rd respondent in supervising and conducting the meeting on 18.3.2005 and the resultant decision thereon electing the 5th respondent as the chairperson of the 4th respondent society as arbitrary, illegal, unjust, contrary to law, without the authority of law, contrary to A.P. Cooperative Societies Act, 1964 and the Rules made thereunder and also in violative of Article 14 of the Constitution of India and issue a consequential direction to the 3rd respondents herein not to give effect to the same and conduct fresh election by following due process of law.

The sum and substance of the counter filed by the 4th respondent is that elections of the 4th respondent Co-Op. Society were held in September, 2003 and the Directors were elected by the Members of the 4th respondent Society and the Committee elected the 5th

petitioner as Chairman. It is further averred that consequent on the notice to the 3rd respondent by the 5th respondent to move a no confidence move against the 5th petitioner, the 3rd respondent fixed the date as 18.3.2005 for the Committee Meeting and at 11.00 a.m. meeting was held and majority of the Directors voted in favour of the no confidence move and thus the 3rd respondent, at 3.00 p.m. declared elected the 5th respondent, as the Chairman. It is further submitted that the 3rd respondent on the notice issued by the 5th respondent, issued a notice on 24.2.2005s to all the Directors and fixed the date as 18.3.2005, in terms of Rule 24(A)(2) and declared the result of the motion under Rule 24(A)(4).

The sum and substance of the counter filed by the 5th respondent is that under Sec.34-A(13) of the Act, no notice of a motion of no confidence shall be made within one year of the assumption of office by a President and Vice President. It is submitted that on verification of the move of no confidence motion, the Commissioner and Director of Handlooms & Textiles, 2nd respondent, fixed a meeting on 18.3.2005 at 11.00 a.m. and 23 out of 24 members have attended the meeting and 19 have voted in favour of the no confidence move and at that stage, a letter of resignation addressed to the Commissioner and Director of Handlooms and Textiles, Hyderabad was handed over to the Election Officer/Registrar, by the 5th petitioner. Thus denied that the no confidence motion has become infructuous. It is further submitted that the resignation was not handed over to a proper person for acceptance. It is further submitted that the contention of the petitioners that the election of the Chairman as a result of carrying out the no confidence motion should be conducted as per Rule 22 of the Rules is totally misconstrued, but since it being filling up the resultant vacancy of the Chairman, consequent to the carrying out of no confidence motion, the procedure envisaged under Rule 24(A)(4) is applicable. It is further submitted that the situation is governed in the instant case by Sec. 34(A)(5) and (11) of the Act read with Rule 24-A(4), (8), (9), (10), (11) and (12) of the Rules and

therefore, his unanimous election as the Chairman is lawful and valid. It is further contended that the question of application of Rule 22 D(2) of the Rules does not arise. It is further submitted that under Rule 11, if there is no contest, the Registrar shall declare the candidate as elected and, therefore, when there was no contest for his election as Chairman, the declaration of results at 3.00 p.m. on 18.3.2005 is perfectly lawful and valid and, therefore, his assumption of charge consequent to his unanimous election, is also lawful. Therefore, sought for dismissal of the writ petition.

In the backdrop of these facts, Sri S.Ramachandra Rao, learned Senior Counsel, on behalf of the petitioners, contends that the respondents have not followed the procedure contemplated under the provisions of the Act, in conducting the election to the post of Chairman. He further contends that Rule 22 provides for the apoontment of an Election Officer, not below the Rank of Deputy Registrar, who shall be appointed not less than 7 days prior to the date of polling, that and under Clause (c) a voters list has to be prepared. He also contends that Sec. 34-A contemplates motion of no-confidence in the President and Vice President of the Committee and it shall be made in accordance with the procedure laid down in that section. Accordingly when no confidence motion was moved, a meeting was convened on 18.3.2005 at 11.00 a.m. and the Registrar has passed an order of removal from the chairmanship of the Committee, in compliance of Sub-Sec. 11 of Sec. 34-A of the Act, he ought to have filled up the vacancy in the manner prescribed, as defined under Sec. 2(1) of the Act, to mean as prescribed by Rules made under the Act. When Rule 24-A of the Rules provides that as soon as the motion of no confidence is carried against the President/ Vice President, or against both the President and Vice-President simultaneously at one time, the Registrar shall declare the results of motion and immediately announce the date, time and place of election of the President/Vice President, as the case may be, for filling up the resultant vacancy or vacancies, the Registrar ought not to have declared the 5th respondent elected as chairman on the

same day at 3.00 p.m. and that too, in derogation of Sub-Rule (7) of Rule 24-A, which provides that the Registrar shall pass an order of removal of the President or the Vice President, within a period of the days from the date on which the motion of no-confidence is carried out, and therefore, the election is liable to set aside, being violative of Sub-Rule (4) of Rule 24-A of the Rules.

On the other hand, Mr. D.Prakash Reddy, the learned Senior Counsel, on behalf of the 5th respondent contended that consequent upon the move of no confidence motion, a meeting was convened on 18.3.2005 wherein 5th petitioner has lost by a majority of more than 2/3rds, therefore, the announcement of election of the 5th respondent unanimously, as the Chairman, to the resultant vacancy of the 5th petitioner, is perfectly in the manner prescribed and also in terms of Sec.34-A read with Rule 24-A of the Rules and, therefore, there is no illegality or violation of any of the provisions of the Act or the Rules. He further submits that in furtherance of Sub-Rule (5) of Rule 24-A, since an order of removal was passed against the 5th petitioner, the 5th respondent after being elected unanimously has assumed the office, inasmuch as immediately after the announcement of result of motion of no-confidence, the President, was incapacitated to discharge any function as such. It is further submitted that when both the President and Vice-President are removed simultaneously, the Registrar shall then draw alts among the members and the candidate on whom the lot falls shall be the President or the Vice President for the interim period till regular elections to such President or Vice President are held.

The learned Advocate General, appearing on behalf of the respondents 1 to 3, has advanced similar arguments.

For better appreciation of the lis, it is apposite to extract the relevant provisions of law, having a bearing on the issue. Rule 24-A of the Rules reads as under:

Meeting after receipt of no confidence notice: (1) *As soon as the notice along with a copy of the motion expressing no confidence is received, the Registrar shall, notwithstanding anything in the bye-laws, convene a meeting of the committee*

(2) The service of the notice maybe effected in any of the following ways namely:

(a) by giving or tendering it to such person, or

(b) by sending it by registered post to their address;

(3) a copy of the notice shall also be affixed on the notice board of the society and also n the notice board of the office of the Registrar;

Provided ……

(4) As soon as the motion of no confidence is carried against the President/Vice President or against both the President and Vice-President simultaneously, at one time, the Registrar shall declare the result of the motion and immediately announce the date, time and place of election of the President/Vice-President, as the case may be, for filling up the resultant vacancy or vacancies.

(5) Immediately after the announcement of result of motion of no confidence, the President/Vice President, as the case may be, shall not discharge any functions as President or Vice-President.

(6) ……

(7) The Registrar shall pass an order removing the President/ Vice-President, or both the President and Vice-President, as the case may be, within a period of three day from the date on which the motion of no confidence is carried under Sub-Rule(4)

(8) to (10)……..

(11) If there is no contest, the Registrar, shall declare the candidate as elected as President, Vice-President, and if there is a contest, a pool shall be taken. The Registrar shall read out the names of the contesting candidates for that office. He shall thereafter record the number of votes polled for each such candidate as the case may be. The Registrar shall announce the number of votes secured by each candidate as the result of election shall be recorded and attested by them.

(12) & (13)……..”

It is not in dispute that the 5th petitioner handed over his resignation to a person who had no authority to receive muchless to accept or reject the same. Therefore, the contention of the learned counsel for the petitioners that the motion of no confidence carried against the 5th petitioner had become infructuous and that there was no cause of action for conducting the election is misnomer. Therefore, the contention of the learned counsel for the petitioners that a motion expressing want of confidence in the President or the Vice President of a Committee may be made in accordance with the procedure laid down in Sub-Section 34-A of the Act, cannot be countenanced. The controversy is squarely covered by Sub-Rule 24-A of the Rules, as rightly contended by the learned counsel for the respondents.

Sub-Rule (4) of Rule 24-A which was added by GO Ms. No. 257 dated 8.5.1986 authorises the Registrar to declare the result of no-confidence motion and *immediately* announce the date, time and place of election of the President/Vice-President, as the case may be, for filling up the resultant vacancy/vacancies. Accordingly, on receipt of the no confidence motion against the 5th petitioner, the Registrar had convened the meeting on 18.3.2005 at 11.00 a.m. and majority of the Directors voted in favour of the no-confidence and thus the 5th petitioner lost no confidence motion by more than 2/3rd majority of the Members, in the meeting that was convened on 18.3.2005, in compliance of Section 34-A of the Act and the Registrar in the manner prescribed under the Rule 24-A of the Rules, had filled the vacancy caused by the removal of 5th petitioner and declared the 5th respondent as elected to the post of Chairman unanimously, on the same day at 3.00 p.m. and, therefore, when there is no contest, in terms of Sub-Rule 11 of Rule 24-A of the Rules, the order of removal passed by the Registrar is perfectly justified. Having passed the said order, the Registrar has to take steps in the manner prescribed under the provisions of the Act and the Rules. Thus the Registrar as complied the mandatory provision of sub-Rule (4) of Rule 24-A in immediately announcing the date, time and place of election of the

Chairman as on 18.3.2005 at 3.00 a.m. Since there was no contest, the 5th respondent was elected in terms of Sub-Rule 11 of Rule 24-A unanimously, and therefore, the Registrar is well within his powers to declared the 5th respondent as elected Chairman on the same day at 3.00 p.m. and he assumed the charge of office. The above actions of the Registrar, in any way, cannot be treated as actions in derogation of the Rules and provisions of the Act. Therefore, the contention of the learned Senior Counsel for the petitioners that having passed the removal order of the 5th petitioner on 18.3.2005, the Registrar ought not to have declared the 5th respondent, as elected, on the same day at 3.00 p.m., cannot be countenanced, inasmuch as the Legislature in its wisdom did not prohibit the Registrar from announcing of date, time and place of election, on the date of removal of the President, on no confidence motion. On the other hand incorporated the phrase *immediately announce the date, time and place* of election on the date of passing removal order. When there is no express prohibition or embargo under the statute, the Registrar is empowered to pass an order removing the President or the Vice President, within a period of three days from the date on which the motion of no confidence is carried under Sub-Rule (4) and once the results of no confidence motion are declared, removing the President or Vice President, the Registrar shall immediately announce the date, time and place of election of the President / Vice President, for filling up the resultant vacancy or vacancies.

Having regard to these sacrosanct provisions of law, I am of the considered view that the Registrar has substantially complied with Sub-Rules (4), (7) and (11) of Rule 24-A of the Rules. The For these reasons, the contention of the learned Senior Counsel for the petitioners that the election of the 5th respondent is liable to be set aside for not conducting the election under Rule 22, is a misnomer, for the reason that he as not tendered the resignation to appropriate authority, muchless there is an order of acceptance of such resignation prior to the passing of no confidence motion. Consequently, I do not see any reason to entertain the writ petition.

The writ petition fails and is accordingly dismissed at the stage of admission. No order as to costs.

Elipe Dharma Rao, J.

April 29, 2005

LR Copies to be marked.

MAS.

To

1. One Fair Copy to the Hon'ble Sri Justice Elipe Dharma Rao (for His

Lordship's kind perusal)

2. The Principal Secretary to Government of A.P.,

Dept. of Industries & Commerce for Handlooms & Textiles,

Secretariat, Hyderabad.

3. The Commissioner & Director of Handlooms & Textiles,

B.R.K.R.Bhavan, Tankbund, Hyderabad.

4. The Joint Director (H&T) /Registrar-Authorised Officer,

Office of the Commissioner & Director of Handlooms &
Textiles, B.R.K.B.Ravan, Tankbund, Hyderabad.

5 Vice Chairman & Managing Director.

A.P.Handloom Wavers Co-Op. Society Ltd., APCO,

Regd. office: Narayanguda, Hyderabad.

6. Two copies to the Advocate General,

A.P. High Court Buildings, Hyderabad.

7. 8 L.R. Copies

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